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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILL D. STALLINGS and
STALLINGS SALVAGE, INC.,

Defendants.

Civ. Action No.

3:05CV247-H

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This civil action is brought against defendants, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-6675 (CERCLA). This action seeks to recover from defendants Bill D. Stallings ("Stallings") and Stallings Salvage, Inc. ("SSI") the costs incurred by the United States in response to a release or threatened release of hazardous substances at the Stallings Salvage Site in Monroe, North Carolina ("Site") pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The United States also requests that the Court enter a declaratory judgment binding in any subsequent action or actions to recover further response costs or damages, adjudging that

Defendants are liable for response costs or damages in any such subsequent action or actions to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district, pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because plaintiff incurred response costs within the Western District of North Carolina, all or a substantial part of the events or omissions giving rise to the claims for response costs occurred in this district, and the property from which the claims in this action arise is situated in this district.

THE DEFENDANTS

4. Defendant SSI is a corporation organized and incorporated under the laws of the State of North Carolina, having its principal place of business in Monroe, Union County, North Carolina.

5. Defendant Stallings is a resident of Monroe, Union County, North Carolina, whose acts or omissions giving rise to this Complaint occurred in Monroe, North Carolina.

6. Each of the Defendants is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

FACTS

7. The Site is a one-acre parcel of land located on Secrest Avenue, Monroe, North Carolina, in a mixed residential and commercial use area. An abandoned building formerly used by Defendant SSI as part of a retail construction supply business is located on the Site.

8. From approximately 1975 until 1996, defendant Stallings owned the Site property.
9. From approximately 1984 until 1994, defendant SSI operated the Site as part of its retail construction supply business. Among other things, SSI used the Site to store and mix various construction supplies, including but not limited to paint, carpet adhesives, and related materials.
10. In 1994, SSI ceased all operations at the Site, removing some of the inventory and other materials from the Site, and abandoning the remaining inventory and other materials at the Site.
11. In February 1996, Stallings was divested of legal title and ownership of the Site by virtue of foreclosure by a creditor under a Deed of Trust collateralizing an earlier loan to Stallings.
12. The Monroe, North Carolina, Fire Department became aware that the Site had been abandoned sometime in 1998, and inspected the Site in December 1998. This inspection revealed that the roof of the building on the Site had collapsed, exposing the contents of the building to the elements; that numerous containers of various substances had been abandoned in the building; and that some of the containers were rusting, rotting, leaking, and otherwise deteriorating due to exposure to the elements.
13. Shortly after the site inspection by the Monroe Fire Department, this matter was referred to EPA, which began to conduct limited sampling, perform air monitoring, and document on-site activities and Site conditions.
14. EPA sampling and analysis confirmed the presence of hazardous substances, within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14), at the Site, including but not limited to volatile organic compounds and/or semivolatile organic compounds, waste paint, waste paint sludge, solvents, and waste adhesives, which are hazardous substances because they are categorized as D001 characteristic hazardous waste pursuant to Section 3001 of the Solid Waste

Disposal Act, 42 U.S.C. § 6921. Soil sampling under the Site building also revealed the presence of small amounts of fluoranthene, a semivolatile organic compound, which is a hazardous substance because it is categorized as U120 listed hazardous waste pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921.

15. Based on the site assessment activities undertaken by EPA, EPA determined that there was a substantial threat of a release of hazardous substances into the environment, if not an actual release of hazardous substances, at the Site, and therefore began a removal action on May 30, 2000, pursuant to CERCLA Section 104(a), 42 U.S.C. § 9604(a).

16. The removal action consisted of demolishing the on-site building, removing the various containers from the building, identifying the container contents, and characterizing and disposing of the various waste streams.

17. EPA performed the final work for the removal action on July 21, 2000.

CLAIM FOR RELIEF

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.

19. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. The Site contained hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. There was a release or a threatened release of hazardous substances into the environment at and from the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. As a result of the release or threatened release of the hazardous substances at and from the Site, the United States has incurred "response costs" as defined in Section 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the release or threatened release of hazardous substances at and from the Site.

23. The response actions taken by the United States, and the resulting response costs incurred by the United States, are not inconsistent with the National Contingency Plan, as set forth at 40 C.F.R. Part 300.

24. The abandonment of the various containers of hazardous substances at the Site in 1994 constituted a disposal of hazardous substances, within the meaning of CERCLA Section 101(29), 42 U.S.C. § 9601(29).

25. Defendant Stallings was an owner of the Site at the time of disposal of hazardous substances and is therefore a liable party under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all response costs incurred and to be incurred by the United States in connection with the Site.

26. Defendant SSI was an operator of the Site at the time of disposal of hazardous substances and is therefore a liable party under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all response costs incurred and to be incurred by the United States in connection with the Site.

27. Each of the Defendants is jointly and severally liable to the United States for all costs incurred by the United States, including prejudgment interest, in connection with the Site.

28. The United States is also entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that both Defendants named in this Complaint are

jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs to be incurred by the United States at the Site in the future.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States of America prays that the Court:

- a. Enter judgment in favor of the United States against Defendants Bill D. Stallings and Stallings Salvage, Inc., jointly and severally, for all costs incurred by the United States, including prejudgment interest, in performing the removal action at the Site;
- b. Enter a declaratory judgment binding in any subsequent action or actions to recover further response costs or damages, adjudging that Defendants are liable for response costs or damages in any such subsequent action or actions to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); and
- c. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 31st day of May, 2005.

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

STEVEN A. KELLER ✓
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-5465

GRETCHEN C. F. SHAPPERT
United States Attorney
Western District of North Carolina

DONALD H. CALDWELL, JR.
Assistant U.S. Attorney
227 West Trade Street, Suite 1700
Charlotte, NC 28202
(704) 344-6222

OF COUNSEL:

Colleen Michuda
Associate Regional Counsel
USEPA - Region 4
61 Forsyth St. S.W.
Atlanta, GA 30303